



## OFFICE OF THE PROCUREMENT OMBUDSMAN



# PROCUREMENT PRACTICE REVIEW

*REVIEW OF THE PROCUREMENT MANAGEMENT FRAMEWORK OF NATURAL  
RESOURCES CANADA*

OTTAWA  
APRIL 2015

*PROMOTING FAIRNESS, OPENNESS AND TRANSPARENCY IN FEDERAL PROCUREMENT*

**Office of the Procurement Ombudsman**

Constitution Square  
340 Albert Street, 11<sup>th</sup> Floor  
Ottawa, Ontario K1R 7Y6

Toll Free: 1-866-734-5169  
Fax: 613-947-6211  
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## Introduction

1. Paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act* provides the Procurement Ombudsman with the authority to review the procurement practices of departments to assess their fairness, openness and transparency.
2. In December 2012, routine contact data analysis revealed an unusually high number of contacts regarding Natural Resources Canada (NRCan) procurement practices. Accordingly, a more detailed examination of all contacts from May 2008 (when the office opened) to January 2013 was undertaken. This examination revealed NRCan contacts to be disproportionately high relative to other departments and agencies.
3. A further assessment of these contacts revealed the concerns raised by suppliers spanned all stages of the procurement process, from procurement planning to contract completion.
4. In view of the forgoing, the Procurement Ombudsman determined there were reasonable grounds, as required by section 4.(1) of the *Procurement Ombudsman Regulations* (Regulations), to review the procurement practices of NRCan.

## Review Objective

5. The objective of the review was to determine whether NRCan's procurement management framework ensures the Department's procurement practices are consistent with applicable procurement laws, regulations and policies and allows NRCan to respect the principles of fairness, openness, and transparency.

## Scope and Methodology

6. The scope of the review was NRCan's framework for managing procurement in place from April 2013 to June 2014. The lines of enquiry and criteria developed for this review covered elements of a procurement management framework listed below. Individually and collectively, the following should contribute to achieving consistency with procurement laws, regulations and policies and allow NRCan to respect the principles of fairness, openness, and transparency:
  - Organization and structure;
  - Procurement strategy and planning;
  - Documentation and communication of policies, procedures, and roles and responsibilities;
  - Procurement training;
  - Oversight – monitoring and risk management;
  - Quality assurance; and
  - Reporting

7. Methods of examination included documentation review, data analysis, interviews and queries with management and staff, process observation, and file testing.

### **Why this is important**

8. The Treasury Board (TB) Contracting Policy states that departments and agencies are responsible for ensuring adequate control frameworks for due diligence and effective stewardship of public funds are in place and working as intended. Having an effective procurement management framework in place and operating as intended is important for ensuring procurement is carried out in accordance with contracting requirements, mitigating risk, achieving best value and ensuring fairness, openness and transparency.

### **Background**

9. The raison d'être of NRCan is to improve the quality of life of Canadians by creating a sustainable resource advantage. The Minister has responsibility for more than 30 Acts of Parliament. The Department has offices and laboratories across Canada. According to the Departmental Performance Report for 2013-14, NRCan's total spending in 2013-14 was \$2.1 billion and it had about 4,000 Full-time equivalents (FTE).

10. According to NRCan data, during fiscal year 2013-14 the Department processed about 12,100 procurement transactions with a value of \$262 million.

**Table 1: Profile of Natural Resources Canada Procurement for 2013-14**

Range	Number of transactions	Percentage of Number	Total Dollar Value	Percentage of Value
Less than \$5K	7,961	65.6%	\$11,320,794	4.3%
\$5K to \$10K	1,404	11.6%	\$9,987,186	3.8%
<b>Subtotal – Less than \$10K</b>	<b>9,365</b>	<b>77.2%</b>	<b>\$21,307,980</b>	<b>8.1%</b>
\$10K to \$25K	1,802	14.8%	\$31,470,236	12.0%
<b>Subtotal - Less than \$25K</b>	<b>11,167</b>	<b>92.0%</b>	<b>\$52,778,216</b>	<b>20.1%</b>
\$25K to \$100K	657	5.4%	\$32,892,529	12.6%
More than \$100K	309	2.6%	\$176,432,160	67.3%
<b>Subtotal - More than 25K</b>	<b>966</b>	<b>8.0%</b>	<b>\$209,324,689</b>	<b>79.9%</b>
<b>Total</b>	<b>12,133</b>	<b>100.0%</b>	<b>\$262,102,905</b>	<b>100.0%</b>

Source: NRCan SAP data

11. As illustrated in table 1, the bulk (92%) of NRCan procurement activity for 2013-14 was for transactions less than \$25,000 representing about 20% of total procurement value. About 77% of procurement transactions were below \$10,000 representing about 8% of total procurement value. Transactions more than \$25,000 accounts for a small proportion (8%) of total procurement activity but represent the bulk (80%) of total procurement value.

## Observations

### Organization and structure

12. NRCan informed OPO that a key feature of their procurement delivery strategy is central procurement. Central procurement is delivered by 38 staff located in Ottawa and regional offices across Canada all reporting through to the manager of NRCan's Procurement Services Unit. Central procurement processed approximately 8,200 transactions in fiscal year 2013-14 representing about 68% of NRCan's procurement transaction volume and about 80% of the department's total procurement value.

13. Of the centrally processed transactions, national workload sharing is coordinated and allocated from Ottawa. What this means is a procurement request made by a program manager in one region of Canada could be processed by a procurement officer located in another region.
14. It is important to note that not all procurement is centrally processed. Three program groups within NRCan have delegated contracting authority to acquire specific services up to \$50,000, as well as the ability to establish and use standing offers up to call-up limitations, without going through central procurement. These three program groups are:
  - The Polar Continental Shelf Project;
  - The Surveyor General Branch; and
  - The Public Affairs and Portfolio Management Sector.
15. As this organizational delineation was not anticipated at the time the review was initiated, our scope did not include these three groups. Approximately 4,000 procurement transactions were non-centrally processed representing about 32% of NRCan procurement transactions and about 20% of total dollar value.

#### **Procurement strategy and planning**

16. On an annual basis central procurement calls on program managers to inform themselves of anticipated contracts critical for meeting operational requirements in the next fiscal year. Program managers are to include requirements valued at more than \$70,000 if at risk, unusually complex procurements, and special projects. This annual exercise is primarily for central procurement services to prompt early arrival of requests for central processing. This departmental procurement planning exercise provides coverage for more than 67% of the NRCan annual procurement expenditures and less than 8% of procurement volume.
17. OPO requested evidence of an annual risk-based procurement strategy and/or planning exercise. With the exception of the information provided in the previous paragraph, no other evidence of procurement planning was provided by the department.

#### **Documentation and communication of policies, procedures, and roles and responsibilities**

18. The Treasury Board (TB) Contracting Policy establishes the framework within which contracting authorities must be exercised. Departmental policies and procedures are to align with the requirements of the TB Contracting Policy, and departments are expected to have clearly defined roles and responsibilities for those exercising contracting authority.
19. NRCan has established internal policies and guidance related to procurement, including delegations of financial signing/contracting authority, desk procedures, flow charts, forms, templates and tools. Through NRCan's intranet, links are provided to the TB Contracting Policy and other guiding materials. Materials cover a full range of contracting requirements including statements of work and evaluation criteria. Contracting requirements and process are further communicated in various ways including bulletins, team meetings, feedback from quality assurance tests, and training.

20. Documents and guidance are also contained in SharePoint, a document repository and information system within central procurement services. In effect the Intranet and SharePoint function as a pseudo procurement manual. SharePoint is not available to the three program groups conducting their own procurement outside central procurement.
21. Procurement roles and responsibilities of management and procurement staff are documented and available on the NRCan's Intranet. More specific responsibilities are outlined in various instrument and guidance documents available on NRCan's Intranet. For example, a departmental policy outlines respective accountabilities for procuring IT products and services and for establishing IT standards. In addition, all staff with financial system access must acknowledge their procurement roles and responsibilities and their understanding of all relevant policies and procedures.
22. Overall, departmental policies and procedures and roles and responsibilities align with the TB Contracting Policy.

### **Procurement training**

23. Training for competency development of central procurement staff consists primarily of on the job training by such means as mentoring, team meetings, and feedback from quality assurance tests. NRCan has also informed us some procurement staff is enrolled in the Federal Government's Professional Development and Certification Program for the Procurement, Materiel Management and Real Property Community.
24. In addition, staff is required to take specialized training before using certain government wide procurement tools established by Public Works and Government Services Canada (PWGSC), such as Task-Based Informatics Professional Services.
25. Newly appointed NRCan managers are required to take the mandatory training provided by the Canada School of Public Service, which includes a procurement module. NRCan also provides procurement case scenarios in a leadership course for newly appointed managers.
26. NRCan advised us that procurement staff and program managers prepare individual learning plans (guided by performance evaluations and work objectives), which are then reviewed, approved and monitored by management.
27. With the exception of training outlined in the previous four paragraphs, no other formal procurement training is provided by the department.

### **Oversight - monitoring and risk management**

28. Procurement monitoring and risk management at NRCan are facilitated through the Procurement Review Board (PRB). PRB has a key role in assessing and mitigating risks associated with departmental procurement and contracting activities. The PRB consists of six senior managers. Meetings are scheduled on a monthly basis, with special meetings scheduled as required for case submissions. The PRB is supported by the Procurement Policy Analysis and Reporting (PPAR) Unit. PPAR reports to the Director of Finance and Procurement.



29. The PRB is tasked with:

- Reviewing, for recommendation or modification, procurement strategies of the following contract requirements to be processed by central procurement (excluding those destined for Public Works and Government Services Canada (PWGSC) and procurements using Advance Contract Award Notice process):
  - All non-competitive more than \$25,000;
  - All Standing Offers and Supply Arrangements with a cumulative value more than \$2 million;
  - Requirements where Treasury Board approval is required;
  - Other procurements regardless of value deemed high risk as identified by the Director of Finance and Procurement; and
  - Any procurement client Assistant Deputy Ministers (ADMs) wish PRB to review.
- Reviewing, as appropriate:
  - Complaints from suppliers submitted to the Procurement Ombudsman or the Canadian International Trade Tribunal;
  - Contracting irregularities as identified by the Director of Finance and Procurement;
  - Proposed changes to departmental procurement policies and procedures; and
  - Policy compliance and procurement strategy effectiveness of the procurement requirements of client ADM's and provide advice and guidance where necessary.
- Monitoring of expenditure trends for:
  - Consultants
  - Temporary help service
  - Agencies and casuals

30. PRB attention in particular has been on non-competitive contracts over \$25,000 as these are considered high risk and require pre-approval by PRB.

31. Management monitoring through PRB is made possible by reports issued by PPAR. Two types of reports are provided quarterly regarding contracts valued at more than \$25,000; one report focussed on competitive contracts, the other on non-competitive contracts. Other reports are provided to PRB on an as and when requested basis. Examples include:

- Processing of PWGSC requisitions (9200s);
- Procurement Trend Analysis Report: Air Charter Services FY 12/13;
- Use of Temporary Help Services; and
- Retroactive Contracting Trend Analysis - Q1 FY 12/13

32. While these reports facilitate monitoring of NRCan's procurement activity by the PRB, we noted three areas where NRCan's monitoring regime could be enhanced;

- **Non-centrally processed procurement.** Non-centrally processed procurement represents 32% of NRCan procurement activity. However, the PRB's mandate does not explicitly outline the nature or frequency of monitoring non-centrally processed procurements suggesting one third of the department's procurement activity is not consistently and systematically being monitored by the department's most senior procurement monitoring body.
- **Departmental standing offers and supply arrangements.** PRB is required to review the procurement strategies for the establishment of standing offers and supply arrangements with a cumulative value of more than \$2 million. This involves a review of the sourcing strategy, expected benefits, risk considerations, evaluation and selection methodology as well as the basis and method of payment. However,
  - PRB's mandate does not explicitly include responsibility for monitoring the use of departmental standing offers (DSOs) and supply arrangements (SAs), regardless of dollar value, once they have been established.
  - A listing of individual contracts or call-ups can be extracted from NRCan's financial system (SAP). While NRCan informed us their financial system contains a record of all DSOs/SAs available within the Department, a complete list of all available DSOs/SAs within NRCan was not in evidence. We were also informed that PPAR has been working recently to improve the recording of DSOs/SAs in their financial system.
  - While PPAR's mandate requires it to monitor the extension and use of DSOs/SAs, PPAR has to-date not examined the overall use of DSOs/SAs. NRCan informed us that, when doing quality assurance tests of individual contracts or call-ups, PPAR will assess consistency with the applicable rules of the DSO/SA for the transaction being tested.

At the time of our review, the Department was not actively monitoring if DSOs/SAs were being used as intended.

- **Low Dollar Value Contracts and Amendments.** NRCan procurement data indicates 92% of total transactions (20% of total dollar value) are valued at less than \$25,000. However, PRB mandate does not explicitly extend to the monitoring of this population of contracts, non-competitive contracts valued at less than \$25,000 subsequently amended to more than \$25,000, or contract amendments as deemed to be high-risk by the department.

### Quality assurance

33. We observed various means by which NRCan ensures the quality of its procurement process and products. One of the key means is through the PPAR unit, created in 2010-11.
34. The PPAR mandate (standards document) is focused on central procurement and states that the unit will perform the following duties:

- data verification: review existing records to identify risks and key controls related to data integrity. New processes/improvements will be made accordingly to ensure data accuracy
  - procurement quality assurance (QA): conduct QA of procurement files to ensure that they are documented and managed in accordance with government and departmental procurement and contracting policies and procedures
  - information management: identify relevant information requirements in support of quarterly disclosure, year-end reporting, and ad hoc reporting requests
  - monitoring: perform contract monitoring at the transactional and departmental levels
  - reporting: identify, establish and perform standard contract reporting that will be generated on a regular basis as well as for management decision making and contract related risk management at departmental level
35. The unit has evolved since its creation, moving from having one FTE to its current complement of three. NRCan has informed us the unit's mandate has changed twice in the last three years, including adding a focus on non-competitive contracts more than \$25,000 and retroactive contracting.
36. Another means of ensuring the quality of NRCan procurement processes and products is through the use of procurement checklists including:
- Transactional Checklist for Services
  - Supplemental Checklist for Service Contracts
  - Transaction Checklist for Amendments
  - Amendment Questions for Increasing Value
  - Temporary Help Checklist

The use of these checklists and the requirement to keep them on file is not mandatory.

37. The use of two checklists is mandatory in particular circumstances and both must be kept on file; 1) questions for sole source contracts over \$25,000, and 2) a Contract Planning and Advance Approval (CPAA) form when a request exceeds an individual's approval authority. In addition, the CPAA is recommended for first time or sensitive procurements and can be used if central procurement staff chooses to in those cases. For procurements using the newly introduced e-procurement system, the use of certain stage-specific checklists (e.g. pre-contract questions) is required.
38. We also note that peer review is a part of quality assurance. NRCan's desk procedures indicate that a peer review is to be "considered" for complex transactions. We were informed by NRCan that peer review on some transactions (not all of which would be complex) could be triggered by a CPAA or by central procurement.

39. While discretionary use of checklists and peer review are useful tools that provide flexibility, may help experienced personnel to expedite procurement, and may be appropriate for low risk transactions, the use of checklists and peer review on a systematic basis can strengthen the quality of the procurement process. We did not see evidence that senior management had assessed whether or not the discretionary use of these tools is acceptable from a quality assurance perspective.
40. NRCan has taken into consideration its objective of high quality contracting within central procurement by way of performance management agreements with employees. In addition central procurement has time based service standards. Procurement officers are expected to process a procurement request within a given period of time depending on the type and complexity of procurement involved.
41. We were advised by procurement management that they recognize transactional errors can occur given the complexity and volume of contracting at NRCan. According to procurement management, a critical error would include, for example, a contract being awarded to a wrong vendor, not obtaining proper approval, and insufficient sole-source justification. When errors or mistakes are discovered, management takes steps to address them.
42. In addition, PPAR raises procurement issues to the Manager of Corporate Procurement Services as well as the Director of Finance and Procurement Services through quality assurance reports. We were informed that these issues were addressed internally with no formal requirement for a response. As a result of our review, in July 2014, PPAR began requesting formal responses to the issues identified in their reports.
43. These quality assurance reports are also made available on the internal SharePoint system and PRB members are informed of their availability for review. However, unless specifically requested by the Board, the reports are not required to be tabled at PRB. Quality assurance results are not systematically tracked for error trend analysis, risk assessment, or to identify potential root causes.
44. The concept of a PPAR and its associated functions is a sound management practice. However, its utility is not fully optimized as its mandate is focused primarily on central procurement. PPAR monitoring of non-centrally processed procurement is not systematically conducted and only undertaken on an as and when requested basis.

## Reporting

45. TB Contracting Policy requires departments to publicly disclose quarterly, within one month after the close of each quarter, contracts entered into valued at more than \$10,000, or when amendments bring the value of a contract to more than \$10,000.
46. Contracting data is provided to NRCan managers by PPAR for verification before making it public. Managers may or may not respond to this request. If they do respond, and errors are flagged, PPAR corrects them. Follow-ups are sent by PPAR to those who do not respond. If a response is not received, data is assumed correct. As manager verification is important to ensure data integrity for public reporting, the current approach represents a risk to the department.

47. OPO notes NRCan introduced new proactive disclosure training for managers, which outlines steps managers need to take in order to validate the data being reported.

### **Test results**

48. OPO reviewed select procurement files to assess whether NRCan's procurement practices are consistent with applicable policies and procedures. Test results indicate some good practices, for example evaluation criteria were reflected in Statements of Work. Procurement files which contained checklists were notably more robust and compliant than those without. Some file deficiencies include:
- documentation to explain and support key decisions/changes (e.g. switch from a Request for Proposal to an Advanced Contract Award Notice);
  - non-competitive contracts under \$25,000 had no evidence of price support;
  - incorrect coding for reporting purposes
49. While these test results should not be considered indicative of the entire contracting population, they suggest practices are not always adhering to established policies and procedures.

### **Conclusion**

50. Based on the elements examined through this review, NRCan's procurement framework is aligned with procurement related legislation and policy requirements. No major gaps were found in the framework that would pose a risk to fairness, openness and transparency. We note good elements from a governance perspective, more specifically the PRB and PPAR as oversight and monitoring entities.
51. We note however, that the scope of PRB's mandate is focused on contract requirements processed by central procurement; suggesting 32% of the department's total procurement volume is not consistently and systematically being monitored. In addition, PRB's mandate does not explicitly include monitoring of contracts valued at less than \$25,000, which by exclusion, results in a mandate for the monitoring and oversight of 8% or less of NRCan's total procurement volume, representing 80% of total procurement value. Similarly PPAR is mainly focused on procurements processed by the central procurement unit. These limitations represent potential vulnerabilities to the department.
52. From an operational perspective, we note good practices through the use of checklists, peer reviews, and quality assurance of procurement files. However, the current sporadic, and in some cases discretionary, use of these effective safeguards could jeopardize the overall quality of NRCan procurement.
53. Given NRCan's contracting volumes and values, it may be advisable to review existing awareness and training sessions to ensure the department's training regime is sufficiently robust to contribute to fair, open, and transparent procurement.

## Recommendation

54. The Procurement Ombudsman recommends that:

- NRCan take appropriate measures to enhance its monitoring and oversight regime commensurate with senior management sanctioned risk tolerances for the full spectrum of NRCan procurement.
- NRCan build on the existing good quality control and assurance practices by taking the necessary measures to ensure these are applied consistently and to all sectors of the department procuring goods and services; regardless of type of procurement and monetary value.

## Department Response

55. In accordance with section 5 of the Regulations, the Procurement Ombudsman provided NRCan the opportunity to comment on the proposed recommendations of this review and the reasons for them. Departmental comments were taken into consideration prior to the report being finalized and published.
56. In response to this review, NRCan will continue to focus its efforts on strengthening monitoring, oversight and quality control of contracts.